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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-350

No. COA21-678

Filed 17 May 2022

Mecklenburg County, Nos. 20 JA 488–90

IN THE MATTER OF: A.R., D.R., P.H.

Appeal by respondent-mother from order entered 26 April 2021 and order entered 30 July 2021 by Judge Aretha V. Blake in Mecklenburg County District Court. Heard in the Court of Appeals 27 April 2022.

Marc S. Gentile for petitioner-appellee Mecklenburg County Department of Social Services/Youth and Family Services.

Ward and Smith, P.A., by Christopher S. Edwards, for guardian ad litem.

Freedman Thompson Witt Ceberio & Byrd PLLC, by Christopher M. Watford, for respondent-appellant mother.

ZACHARY, Judge.

¶ 1 Respondent-Mother Alicia Hannah appeals from (1) an order adjudicating her minor children "Amy," "David," and "Penny"[1] as neglected and adjudicating Amy as abused, and (2) a disposition order continuing the children's placement in the custody

[1] We use the pseudonyms adopted by the parties for ease of reading and to protect the juveniles' identities.

of Petitioner-Appellee Mecklenburg County Department of Social Services, Youth and Family Services ("YFS"). On appeal, Respondent-Mother argues—and YFS and the guardian *ad litem* agree—that the trial court erred by adjudicating David and Penny as neglected and by basing the corresponding dispositions on those adjudications. After careful review, we reverse the adjudication order with regard to David and Penny, and we vacate the disposition order as to David and Penny.

Background

¶ 2 On 2 December 2020, YFS filed a juvenile petition alleging that David and Penny—then, ages 4 and 10, respectively—were neglected juveniles. YFS also alleged in the petition that 8-month-old Amy was an abused and neglected juvenile. YFS asserted that, pursuant to an informal custody agreement previously arranged by Respondent-Mother, the children stayed with David and Amy's father approximately five days per week while Respondent-Mother worked**.** YFS further alleged that in the months preceding its petition, Amy received numerous, serious injuries of unknown origin. During the times relevant to the allegations, the children alternated between Respondent-Mother's care and David and Amy's father's care.

¶ 3 The matter came on for adjudication on 2, 4, 10, and 26 March 2021 in Mecklenburg County District Court. On 26 April 2021, the trial court entered its adjudication order. The court determined that Amy "sustained non-accidental trauma that resulted in her injuries[,]" and adjudicated Amy as abused and neglected

pursuant to N.C. Gen. Stat. § 7B-101(1) and (15) (2021). The trial court also adjudicated David and Penny as neglected pursuant to N.C. Gen. Stat. § 7B-101(15), "in that they lived in a home where another child was abused and neglected." However, the order contained no findings of fact in support of the court's determination that David and Penny were neglected. Additionally, the trial court ordered that the children remain in the legal custody of YFS, with placement in YFS's discretion.

¶ 4 Following multiple hearings, on 30 July 2021 the trial court entered a disposition order mandating that the children "remain in the custody of YFS with placement in foster care" because "[c]ontinuation of the juveniles in or return to the home would be contrary to their best interest, health, safety and welfare." The court further ordered that Respondent-Mother fully comply with random drug tests and her Out of Home Family Services Agreement; continue attending her psychotherapy; and maintain employment and a stable and safe home. The trial court granted Respondent-Mother virtual visitation with her children for "a minimum of 30 minutes twice weekly and in-person visits supervised weekly . . . for a minimum of four hours per week."

¶ 5 On 26 August 2021, Respondent-Mother timely filed her amended notice of appeal from the adjudication and disposition orders.

Discussion

¶ 6 On appeal, Respondent-Mother argues that the trial court erred by adjudicating David and Penny to be neglected. In the alternative, Respondent-Mother asserts that the trial court abused its discretion by ordering her to submit to a parenting-capacity assessment. YFS and the guardian *ad litem* concede that the trial court erred in adjudicating David and Penny as neglected. We agree.

I. Standard of Review

¶ 7 "On appeal from an adjudication of neglect, abuse, or dependency, this Court must determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact." *In re K.P.*, 249 N.C. App. 620, 624, 790 S.E.2d 744, 747 (2016) (citation and internal quotation marks omitted). The "clear and convincing" standard for findings of fact "is greater than the preponderance of the evidence standard required in most civil cases. Clear and convincing evidence is evidence which should fully convince." *In re M.H.*, 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020) (citations and internal quotation marks omitted).

¶ 8 Conclusions of law, however, are reviewed de novo. *In re K.B.*, 253 N.C. App. 423, 428, 801 S.E.2d 160, 164 (2017). "Whether a child is neglected is a conclusion of law which must be supported by adequate findings of fact." *In re S.M.L.*, 272 N.C. App. 499, 509, 846 S.E.2d 790, 797 (2020) (citation omitted).

¶ 9 Furthermore, the trial court determines in its discretion the weight to give evidence of abuse or neglect of other children in the home. *See In re J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698 (2019) (observing that the neglect "statute affords the trial judge some discretion in determining the weight to be given" to evidence of a prior neglect adjudication of another child in the home (citations omitted)). "Abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re A.J.L.H.*, 275 N.C. App. 11, 24, 853 S.E.2d 459, 468 (2020) (citation omitted).

II. Analysis

¶ 10 Respondent-Mother does not challenge Amy's adjudication. In fact, she "concedes that, under our case law precedent, . . . competent evidence supported the trial court's conclusion that Amy maintained the status of an abused and neglected juvenile." Instead, Respondent-Mother asserts that the trial court erred in concluding that David and Penny were neglected juveniles because the court (1) failed to "make individualized findings to show that David and Penny were not being properly cared for or were living in an injurious environment at the time of the filing of the petition[,]" and (2) "improperly adjudicated David and Penny as neglected based solely on Amy's abuse."

¶ 11 The Juvenile Code defines a "neglected juvenile" as "[a]ny juvenile less than 18 years of age . . . who is found to be a minor victim of human trafficking G.S. 14-43.15" or whose parent, guardian, caretaker, or custodian:

> a. Does not provide proper care, supervision, or discipline.
>
> b. Has abandoned the juvenile.
>
> c. Has not provided or arranged for the provision of necessary medical or remedial care.
>
> d. . . . [H]as refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter;
>
> e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.
>
> f. Has participated or attempted to participate in the unlawful transfer of custody of the juvenile under G.S. 14-321.2.
>
> g. Has placed the juvenile for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15)(a)–(g).

¶ 12 "In order for a child to be properly adjudicated as neglected, this Court has consistently required that there be some physical, mental or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." *S.M.L.*, 272 N.C. App. at 509, 846 S.E.2d at 797 (citation and internal quotation marks omitted); *see also* N.C. Gen. Stat. § 7B-101(15)(a). "Similarly, in order for a court to find that the child resided in an

injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm." *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016); *see also* N.C. Gen. Stat. § 7B-101(15)(e).

¶ 13 Furthermore, "[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." N.C. Gen. Stat. § 7B-101(15). "[T]his language regarding neglect of other children does not mandate a conclusion of neglect," and the trial court "has discretion in determining the weight to be given such evidence." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005) (citation and internal quotation marks omitted).

¶ 14 However, this discretion is not unlimited, in that "the fact of prior abuse [of another child in the home], standing alone, is not sufficient to support an adjudication of neglect." *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (citation omitted), *writ of supersedeas and disc. review denied*, 367 N.C. 524, 762 S.E.2d 213 (2014). "If the trial court relies on instances of past abuse or neglect of other children in adjudicating a child neglected, the court is required to find the presence of other factors to suggest that the neglect or abuse will be repeated." *S.M.L.*, 272 N.C. App. at 516, 846 S.E.2d at 801 (citation and internal quotation marks omitted).

¶ 15 Here, the trial court erred by concluding, without more, that David and Penny "are neglected children as defined in N.C. Gen. Stat. § 7B-101(15) in that they lived in a home where another child was abused and neglected." The only finding in the trial court's adjudication order relating to David and Penny, that "[t]he petition alleged that [Amy] was abused and neglected and the other children were neglected[,]" is insufficient to establish any "physical, mental or emotional impairment of [David or Penny] or a substantial risk of such impairment as a consequence of [Respondent-Mother's] failure to provide proper care, supervision, or discipline." *Id.* at 509, 846 S.E.2d at 797 (citation omitted). Nor does this finding demonstrate that "the environment in which [Penny and David] resided . . . resulted in harm to the child[ren] or a substantial risk of harm." *K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518.

¶ 16 Moreover, while the statutory definition of "neglected juvenile" allows the trial court to consider whether the juvenile "lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home[,]" N.C. Gen. Stat. § 7B-101(15), the court is nevertheless "required to find the presence of other factors to suggest that the neglect or abuse will be repeated[,]" *S.M.L.*, 272 N.C. App. at 516, 846 S.E.2d at 801 (citation and internal quotation marks omitted). The trial court did not do so here.

¶ 17 Hence, because "the fact of prior abuse [of another child in the home], standing alone, is not sufficient to support an adjudication of neglect[,]" *J.C.B.*, 233 N.C. App. at 644, 757 S.E.2d at 489 (citation omitted), the trial court's adjudications of David and Penny as neglected juveniles cannot stand, as they were not "supported by adequate findings of fact[,]" *S.M.L.*, 272 N.C. App. at 509, 846 S.E.2d at 797 (citation omitted). Thus, we reverse the trial court's adjudications of Penny and David as neglected, *see, e.g.*, *J.C.B.*, 233 N.C. App. at 644–45, 757 S.E.2d at 489–90 (reversing the trial court's orders adjudicating juveniles as neglected because the trial court failed to make the required findings of fact), and vacate the subsequent dispositions, *see, e.g.*, *K.P.*, 249 N.C. App. at 627, 790 S.E.2d at 749 ("As we have reversed the trial court's order for adjudication and disposition, we vacate the orders based upon the adjudication order . . . ."). Having so determined, we need not reach Respondent-Mother's alternative argument.

Conclusion

¶ 18 For the foregoing reasons, we conclude that the trial court erred in adjudicating David and Penny as neglected. Accordingly, we reverse the trial court's adjudication order with regard to David and Penny and vacate the corresponding portions of the trial court's subsequent disposition order as to those juveniles. The trial court's orders remain undisturbed with regard to Amy.

ADJUDICATION ORDER REVERSED IN PART; DISPOSITION ORDER VACATED IN PART.

Judges DILLON and CARPENTER concur.

Report per Rule 30(e).